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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Report submitted by Mr. Abid Hussain, Special Rapporteur, in accordance with Commission on Human Rights resolution 1999/36

Addendum

Visit to the United Kingdom of Great Britain and Northern Ireland

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Introduction

1. This report has been prepared pursuant to resolution 1999/36 of the Commission on Human Rights. It presents and analyses information received by Mr. Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, during his visit to the United Kingdom of Great Britain and Northern Ireland from 24 to 29 October 1999, as well as information received from individuals and non-governmental organizations concerning matters relating to the right to freedom of opinion and expression.

2. By letters dated 3 and 18 June 1999 addressed to the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government for a visit to that country. On 22 June 1999, the Government of the United Kingdom of Great Britain and Northern Ireland (hereafter referred to as the United Kingdom) granted this request.

3. The Special Rapporteur would like to express his gratitude for the cooperation in discharging his mandate extended to him by the Government of the United Kingdom.

4. He would also like to express his appreciation to the Director of the United Nations Information Centre in London and his staff, who helped make this visit successful.

5. The first two days of the visit were spent in London and the remaining days in Belfast. During his mission, the Special Rapporteur met with representatives of the Government, members of Parliament and the judiciary, as well as with representatives of non-governmental organizations active in the field of human rights, academics, media professionals, members of civil society and other persons of interest to his mandate.

6. A list of persons with whom the Special Rapporteur met during the visit is contained in the annex to this report. The Special Rapporteur would like to take this opportunity to thank those he met for their generous efforts to assist him during his visit to the United Kingdom.

7. The purpose of this report is to examine the state of freedom of opinion and expression in the United Kingdom by raising particular issues and debates relating to this right. Particular attention will also be given to the situation in Northern Ireland.

I. BACKGROUND AND CONTEXT

8. In the past two years, the United Kingdom has accomplished major constitutional and policy changes setting Northern Ireland on a steady path towards a much desired peace process. The climate for such political changes was conditional on the creation of cross-community partnerships, from the grass-root level to the highest echelon of political power. In particular, under the Good Friday Agreement, new institutions were created that underscored the need for human rights to be at the centre of the process leading to the establishment of a Northern Ireland Human Rights Commission. The Good Friday Agreement, accepted by a clear majority on 20 May 1998, provided for the creation of three interconnected bodies: a Northern Ireland Assembly, a North-South Ministerial Council and a Council of Isles. The Agreement also reiterated the parties' commitment to mutual respect and to safeguarding the civil rights and

religious liberties of everyone in the community. This new political willingness was reflected in the promotion of a bill of rights, addressing the need for support and services to the victims of violence and the rights of ex-prisoners by facilitating their reintegration into society. A newly born cross-party government has made disarmament and devolution of power a real opportunity to end the violence that has beset Northern Ireland for the past 30 years.

9. The United Kingdom is also in the middle of certain constitutional changes, with the recent adoption of the Human Rights Act on 9 November 1998. The incorporation of the European Convention on Human Rights in British law gave a fundamental imprint to the new political arrangements and constitutional changes in the United Kingdom.

10. As far as freedom of opinion and expression is concerned, the printed and broadcasting media have always flourished in the United Kingdom, being free to review critically government action on many sensitive political issues, as well as spearheading important debates within civil society. The plethora of printed press, as well as free-to-air, satellite and regional broadcast channels, seems to prevent any monopoly of information by providing a wide range of methods of receiving and imparting information. The United Kingdom has free and vibrant media, in both the press and broadcast sectors. At the same time, a number of concerns with regard to several issues relating to freedom of opinion and expression deserve particular attention.

II. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. Legal framework

11. In this section the Special Rapporteur will briefly consider some aspects of the international and national legal framework governing the protection of the right to freedom of opinion and expression in the United Kingdom in general and Northern Ireland in particular.

1. International obligations

12. The United Kingdom is a member of the United Nations and is, thus, bound to respect the rights and guarantees set out in the Universal Declaration of Human Rights, article 19 of which enshrines the right to freedom of opinion and expression.

13. The United Kingdom has accepted a wide range of international obligations in the field of human rights. It is a party to six international instruments: the Convention on the Rights of Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights - but not its two optional protocols (the second was signed by the Government but not ratified).

14. With regard to regional human rights instruments, the United Kingdom has incorporated the European Convention for the Protection of Human Rights and Fundamental Freedoms in domestic law and is a party to the European Convention for the Prevention of Torture and

Inhuman or Degrading Treatment or Punishment. Any individual within the jurisdiction of the United Kingdom may exercise the right to petition the European Court of Human Rights.

2. National legislation

(a) Legal framework

15. Since the United Kingdom has no written constitution, but a series of principles and conventions, there is no formal protection of certain values such as the right to freedom of opinion and expression. Several important statutes do exist, such as the Magna Carta (1215) and the Bill of Rights (1698), which, in the eyes of the law, lay down a strong broad-based fundament of freedom that cannot easily be shaken off. Some of these statutes, however, are susceptible to amendment by Parliament at any time.

(b) The law on the press and other mass media

16. The Broadcasting Act 1996 provides for an expansion of broadcasting outlets for both television and radio. It sets out a new regulatory framework to allow the development of digital terrestrial broadcasting, which will increase the number of channels available and give further opportunities for local and community broadcasting.

17. The regulation of the television business in the United Kingdom is carried out by the Independent Television Commission (ITC). Among its powers, derived from the Broadcasting Acts of 1990 and 1996, ITC issues licences that allow commercial television companies to broadcast in and from the United Kingdom - whether the services are received by conventional aerials, cable or satellite, or are delivered by digital means. The Commission also has a duty to ensure fair and effective competition in the provision of broadcasting services, to ensure that a wide range of television services is available throughout the country and finally to investigate complaints and to publish its findings. However, ITC is not responsible for creating programmes or scheduling them and does not regulate BBC1, BBC2 or S4C (the Welsh fourth channel), although any commercial services provided by these broadcasters must be licensed by ITC.

18. Established in 1991, the Press Complaints Commission (PCC) is an independent organization which makes sure that the Code of Practice is followed by British newspapers and magazines. The Code of Practice, adopted on 16 November 1997, is based on self-regulation. The Commission aims at striking a just balance between protecting the public's right to know and safeguarding the rights of private individuals. The Commission is composed of 16 members: the majority of them are independent, while the remaining members are senior editors from the newspaper and magazine field. PCC deals with issues such as inaccuracy, safeguarding the welfare of children, privacy, avoiding the identification of victims of sexual assault, discrimination and protecting the confidentiality of sources. Legal and contractual matters, as well as advertising, and the taste and decency of what is published, are issues outside its remit. PCC does not provide financial compensation for complainants. It tries instead to find an amicable agreement between the parties involved or, in other cases, provides critical adjudications in the resolution of complaints. PCC receives about 3,000 complaints per year, the majority of which relate to accuracy in reporting and intrusion into privacy.

19. The Obscenity Publications Act 1959 prohibits the publication of obscene material, defined as material which, when taken as a whole, has a tendency to "deprave and corrupt" those who see and/or hear it.

20. The British Board of Film Classification (BBFC), an independent body, is responsible for granting classifications to films and videos. Without classification, films cannot be distributed. The role of BBFC is to ensure that no film or video breaks the law, and it is entitled to refuse classification on the grounds that a film or video may be in breach of the law. Its rulings are effected by local government bodies which grant cinema licences.

21. The Government prepared a freedom of information bill in May 1999 to replace the current non-statutory Code of Practice on Access to Government Information. At the time of the finalization of the present report, the bill was being presented to Parliament.

(c) Other legislation with a direct impact on the exercise of the right to freedom of opinion and expression

22. The Human Rights Act 1998, enacted on 9 November 1998, incorporates in British law most of the provisions of the European Convention on Human Rights, ratified by the United Kingdom in 1951. Yet its integration into British legislation does not affect the validity, continuing operation or enforcement of any incompatible primary or subordinate legislation. From 2 October 2000, citizens of the United Kingdom who feel they are victims of an unlawful act, will be able to take cases involving provisions of the European Convention to British courts for resolution. The rights in question are the standard civil and political rights, including the right to free speech as set out in article 10 of the European Convention.

23. The Official Secrets Act 1989 creates four absolutely protected categories of information: information the Government considers damaging for defence; information entrusted in confidence to other States or international organizations; information concerning the activities of the security and intelligence services; and information relating to international relations. A lifelong duty of confidentiality is imposed upon Crown servants, who include members of the intelligence and security services. According to section 10 of the Act, a person guilty of an offence under the Act shall be convicted to imprisonment of up to a maximum of two years or to a fine, or both.

24. The Defamation Act 1996 stipulates that a person may be exonerated of responsibility for publication if he/she shows that he/she was not the author, editor or publisher of the statement complained of. The Defamation Act also introduces a new procedure to enable defamation claims to be dealt with more rapidly. When the judge decides that either the claimant or the defence has no realistic prospect of success he may give judgement accordingly.

25. Section 10 of the Contempt of Court Act 1981 stipulates that the court can require a person to disclose the source of the information contained in a publication for which he is responsible, if this is in the interests of justice or national security, or for the prevention of disorder or crime. Under section 11, the court has power to postpone or ban the publication of information which, in its view, might hinder the course of justice.

26. The Police and Criminal Evidence Act of 1984 contains provisions that compel journalists to give evidence in cases where the police can prove it is necessary to their investigation.

27. Emergency laws have been in force in Northern Ireland since the partition of Ireland in 1921. Despite the fact that the Good Friday Agreement envisaged the removal of emergency powers, the Government moved to strengthen existing emergency laws in the aftermath of the Omagh car bombing in August 1998. It updated the Northern Ireland (Emergency Provisions) Act of 1991 (EPA) and the Prevention of Terrorism (Temporary Provisions) Act 1989 with the Northern Ireland (Emergency Provisions) Act 1998 and the Criminal Justice (Terrorism and Conspiracy) Act 1998. Under section 18 of the Prevention of Terrorism Act 1989, a person is guilty of an offence if he has information about acts of terrorism that he knows might be of material assistance and he fails to disclose that information. The punishment can be a fine or imprisonment up to five years or both.

3. The establishment of new institutions in Northern Ireland

28. The initiatives envisaged under the Good Friday Agreement to enhance the promotion and protection of human rights were put in place through the creation of various institutions.

29. On 1 March 1999, the Secretary of State for Northern Ireland established the Northern Ireland Human Rights Commission, which is empowered to review laws and practice relating to human rights and to conduct research and educational activities to promote human rights awareness. The Northern Ireland Human Rights Commission has been entrusted with drafting a bill of rights for Northern Ireland to protect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland. This institution is also empowered to conduct investigations into reported human rights abuses, but this function does not include the power to compel oral or documentary evidence. Furthermore, the Commission has a specific duty to have a formal link with the human rights commission which is in the process of being established in the Republic of Ireland.

30. The Independent Commission on Policing for Northern Ireland was established in June 1998 to recommend reforms to ensure fair, impartial and accountable policing. In September 1999, the Policing Commission, chaired by Christopher Patten, released its report, which called for a human rights based approach to police reform.

31. The Northern Ireland Act also made provision for a single Equality Commission to replace the Fair Employment Commission, the Equal Opportunities Commission for Northern Ireland, the Commission for Racial Equality and the Northern Ireland Disability Council. A key aspect of the work of this Commission will be to support the new statutory duty to promote equality of opportunity.

32. The Public Processions (Northern Ireland) Act 1998 established the Parades Commission, a six-member body appointed by the Secretary of State for Northern Ireland and designed to facilitate mediation of contentious parades. This Commission has, inter-alia, the responsibility to reach conclusions in relation to disputed parades and to determine the routes that contentious

parades should take The Chief Constable has the right to appeal any decision made by the Commission to the Secretary of State, and the police retain the ability to intervene in any public procession on public order grounds while a parade is assembling or proceeding

33 The Police (Northern Ireland) Act 1998 provides for a Police Ombudsperson to replace the independent Commission for Police Complaints Recently appointed, on 11 October 1999, the Police Ombudsperson designate, Mrs Nuala O'Loan, will supervise police investigations of complaints filed against the police in Northern Ireland, or referred to the Commission by the Royal Ulster Constabulary (RUC) Chief Constable, the Police Authority, or the Secretary of State for Northern Ireland The Ombudsperson automatically supervises cases involving death or serious injury, and can direct the Chief Constable to bring charges against police officers

B Principal observations and concerns

1 The legal restrictions on freedom of expression

34 Concerns have been expressed to the Special Rapporteur regarding the use of certain provisions of emergency legislation and of ordinary law which can impinge on the exercise of the right to freedom of opinion and expression The adoption of new legislative measures is the subject of a serious debate in the country

(a) Restrictions directly related to the conflict in Northern Ireland

35 The Special Rapporteur notes that legal restriction regarding freedom of expression in the United Kingdom reached its peak with the 1988 broadcasting ban It was imposed under section 29 of the Broadcasting Act 1981 and under the charter of the British Broadcasting Corporation (BBC) and was directed at broadcast interviews with members or supporters of 11 organizations, including Sinn Fein Thus, between 1988 and 1994, there was official censorship in the United Kingdom, also causing self-censorship among journalists, which reduced knowledge and understanding of the conflict in Northern Ireland

36 In addition, the emergency legislation applying in the United Kingdom, including Northern Ireland, was reportedly used to intimidate journalists This was the case of the Prevention of Terrorism Act (PTA), introduced in 1974, which contains certain provisions, particularly section 18, which make it an offence not to pass information to the police about any future act of terrorism or about people involved in terrorism without a reasonable excuse There have been many allegations that PTA powers of arrest and detention were routinely used to harass and intimidate journalists rather than to prevent or investigate acts of terrorism In fact, a very small percentage of those held under the Act were subsequently convicted of offences under the Act It was reported to the Special Rapporteur that Ben Hamilton, at the time a journalist with television Channel 4, had been arrested at his home on 29 September 1992 by Scotland Yard officers after having been involved in the preparation of the programme "The Committee" Transmitted in October 1991, this programme dealt with collusion in the Irish conflict and in particular with the case of Brian Nelson, a military informer who was in police custody in 1991 Thirty days after the transmission, it was alleged that the police arrived at the premises of Channel 4 to hand over production orders granted under schedule 7 of the Prevention of Terrorism Act Since Channel 4 refused to hand over any information requested which would

reveal anonymous sources who were interviewed in the programme "The Committee", Channel 4 was charged with contempt of court and sentenced to pay a fine of £75,000. In November 1992, charges were reportedly dropped against Ben Hamilton just before his second bail hearing, because of insufficient evidence.

37. The Special Rapporteur was informed that the Prevention of Terrorism Act, updated several times until 1989, is still being implemented. It was recently used against the journalist Ed Maloney, the Northern Ireland Editor of the Sunday Tribune, who was required by a court order under paragraph 3 of schedule 7 of the Prevention of Terrorism Act 1989 to hand over his notes of an interview held in 1990 with a police informer (see para.52 below).

38. Nevertheless, the Special Rapporteur agrees that the situation in relation to reporting in Northern Ireland has improved markedly as a result of the peace process. The most obvious sign was the lifting of the broadcasting ban in 1994. The atmosphere in television has become freer and the use of intimidation by successive Governments to prevent the airing of views critical of British policy in Northern Ireland has stopped. In particular, there has been a less hostile approach to interviewing representatives of Sinn Fein and for the first time since 1974 interviews with members of the Irish Republican Army (IRA) were broadcast on British television.

39. However, even if the broadcasting institutions in Northern Ireland and in Britain have reoriented their coverage of Northern Ireland as a result of the progress of the peace process, they still find it difficult to deal with republican representatives and views. In particular, the Special Rapporteur was told that there has been very little public debate or evidence of internal debate on how the broadcasters might facilitate peace by changing both their reporting guidelines and practice and their recruitment procedures. In particular, a number of criticisms were addressed to the BBC, in particular that it has been overly reliant on governmental statements and briefings in the peace process. Their coverage of the issue of marching in Northern Ireland was reported to be sometimes biased in favour of the Orange Order (the main loyalist marching order) against the residents of the Catholic neighbourhoods.

40. A significant case has been brought to the attention of the Special Rapporteur which highlights the difficulties in reporting the transition to peace in Northern Ireland. The Special Rapporteur has been aware of a complaint by Coiste na n-Iarchimi (Ex-Prisoners' Group) about the refusal of BBC Northern Ireland to broadcast interviews with three members of the Committee who are former prisoners released under the terms of the Good Friday Agreement. The three individuals, Ms. Rosie McCorley, Ms. Geraldine Ferrity and Mr. Joe Doherty, were apparently interviewed in the context of a public event launched by this group, created to assist ex-prisoners in their reintegration into society. In fact, none of the interviews were broadcast by BBC Television nor Radio Ulster as scheduled.

41. In response to this allegation, the BBC made reference to its guidelines, which provide that there should always be referral upwards if ex-prisoners are being interviewed and that the victims concerned should be contacted before the interview is broadcast. BBC stated that since one of the interviewees had been convicted of murder and the journalists had had no time to contact the family, BBC had decided not to broadcast the interviews.

42. The Ex-Prisoners' Group informed the Special Rapporteur that it considered the BBC attitude to be discriminatory against ex-prisoners' groups in Northern Ireland, as well as a manifestation of indirect self-censorship. It also criticized the fact that BBC invoked the section on criminals of its guidelines[1] as a basis for its refusal to broadcast the interviews with the ex-prisoners, creating a confusion between political prisoners and ordinary criminals.

43. The Special Rapporteur agrees that, in such a context, BBC was right to take some precautions and that the rights of the victims should be taken into consideration. However, he also agrees with the ex-prisoners' Group that this attitude does not favour the reintegration of ex-prisoners and reconciliation in Northern Ireland. Consequently, he would request BBC to review its guidelines in this particular regard, taking into account the changing political situation in Northern Ireland, and the Good Friday Agreement, which clearly indicates the difference between political prisoners and ordinary criminals.

(b) Restrictions with regard to the confidentiality of sources

44. The Special Rapporteur considers the protection of journalists' confidential sources indispensable for maintaining a free flow of information to journalists and therefore safeguarding the public's right to know. Section 10 of the Contempt of Court Act 1981 provides some protection to writers who do not wish to divulge confidential sources: "no court may require a person to disclose the source of information contained in the publication unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime". This issue is also reflected in clause 6 of the Broadcasting Standards Commission Codes of Guidance, which states: "all reasonable steps should be taken to ensure that guarantees given to contributors, whether as to the content, confidentiality or anonymity, are honoured". However, the Prevention of Terrorism Act allows the police to seize any material which is likely to help a terrorist investigation. The Act also makes it an offence to make any disclosure which is likely to prejudice the police investigation. The Special Rapporteur was informed that, in practice, the courts have interpreted this provision in a restrictive sense, despite the judgement by the European Court of Human Rights in the 1996 case on protection of sources Goodwin v. the United Kingdom.[2] In that case, William Goodwin, a trainee journalist on The Engineer magazine, was prosecuted for refusing to comply with a court order to reveal the source of confidential information so that a corporation could identify a disloyal employee. The European Court held that the standard applied by the British courts was inappropriate and found the United Kingdom in breach of its obligation to respect freedom of expression.

45. During his mission, the Special Rapporteur noted with concern that the issue of protection of journalistic sources has arisen again, particularly with the recent establishment of a tribunal to inquire into the events of "Bloody Sunday", a dramatic event in 1972 in which 13 civilians, who were taking part in an illegal but peaceful demonstration, were killed by the British military in Northern Ireland. This new inquiry, chaired by Lord Saville, was established in January 1998 by the Prime Minister, Tony Blair, on the basis of new evidence. The findings of Lord Widgery's previous inquiry soon after the events, which exonerated the soldiers, were plagued by allegations that they were politically influenced.

46. According to information transmitted to the Special Rapporteur, this new inquiry marks a crisis for investigative journalism in the United Kingdom, since BBC, Channel 4 TV, UTV and The Daily Telegraph newspaper were summoned to hand over to the tribunal all material, including the names of the sources, used for stories on Bloody Sunday. All refused to do so for reasons of confidentiality and have made applications to have the summons withdrawn. They are reportedly now facing contempt of court charges. In particular, information was provided to the Special Rapporteur regarding the three following journalists.

47. Alex Thompson, of Channel 4 News, contributed to a series of programmes on Bloody Sunday which were broadcast in 1998 and became part of the evidence that led to the establishment of the new inquiry. Today, Mr. Thompson is threatened with contempt of court and risks a heavy fine and even imprisonment if he does not give the tribunal the identities of the soldiers who were interviewed in the programme.

48. Documentary maker Peter Taylor, of BBC, is also being pursued over "Remember Bloody Sunday", a programme broadcast on 28 January 1992. Mr. Taylor was asked to reveal his sources and to hand over his notes, which might allow the identification of the military, republican and other sources who assisted him in the strictest confidence in the preparation of the programme. He is also threatened with contempt of court.

49. On 20 May 1999, Toby Harnden, Irish correspondent for The Daily Telegraph, published two articles about Bloody Sunday on the basis of interviews with two members of the Northern Ireland security forces who took part in the events. Mr. Harnden destroyed his notes in order to protect the anonymity of the soldiers, who had agreed to be interviewed on the strict understanding that the journalist would never disclose their identities. He was later summoned to disclose the identities of the soldiers to the Bloody Sunday Tribunal and has so far refused to do so.

50. The Special Rapporteur must admit that in such a difficult context, two issues are competing: the first is the extent to which the identity of the sources of information is necessary to the inquiry in order to find out the truth; the second is the value for the public to be informed concerning allegations of misconduct by agents of the State. However, the Special Rapporteur considers that if media organizations are ordered to hand over confidential information serious damage would be done to public interest journalism in the United Kingdom. As provided by the European Convention on Human Rights, a journalist should not be used as a source for investigating authorities to obtain evidence from. In addition, undertakings of confidentiality have to be absolute, since otherwise the information would never have reached the public domain. It should also not be forgotten that the safety of journalists and their sources could also be compromised if the identity of sources were to be revealed. Consequently, in order to respect journalists' duty to protect source confidentiality, it is the view of the Special Rapporteur that the legal requirement that journalists hand over requested material should be dropped.

51. The Special Rapporteur would like to raise another case which he considers to be very significant in the context of protection of sources.

52. Ed Moloney, the Northern Ireland editor of the Sunday Tribune, received a court order on 2 September 1999 asking him to hand over his notes from a 1990 interview with

William Stovie, a police informer and member of the loyalist Ulster Defence Association (UDA), who was arrested and charged in June 1999 in connection with the murder of Belfast lawyer Patrick Finucane in 1989. This court order was made under paragraph 3 of schedule 7 to the Prevention of Terrorism (Temporary Provisions) Act 1989. William Stobie had given Ed Moloney confidential information in 1990 but had asked him not to reveal it unless something happened to him. After William Stobie's arrest, Ed Moloney published an article on 27 June 1999 detailing some of the allegations Mr. Stobie made in 1990 that the Northern Ireland police had been informed that Finucane's murder was being planned. The journalist, who was facing a heavy fine and a prison sentence of between six months and five years, refused to comply with the court order on the grounds that revealing sources was contrary to journalistic ethics and could also endanger him personally. The journalist decided to file for judicial review of the judge's ruling.

53. On 27 October 1999, the Lord Chief Justice of Northern Ireland quashed the judge's decision given on 2 September 1999 ordering Mr. Moloney to hand over his notes. On the day the judge of the High Court handed down his judgment in the case, the Special Rapporteur was present in Belfast. A member of his delegation attended the court session and heard the delivery of the judgment.

54. The Special Rapporteur welcomes this important decision since he considers that forcing a journalist to hand over confidential interview notes can have an intimidatory effect on investigative journalism. Indeed, such practices can result in deterring journalists from gathering information about human rights abuses committed by government forces and can silence people willing to provide information about human rights violations, because of fear of exposure.

55. However the Special Rapporteur notes that the law, the Prevention of Terrorism Act, is still in force, in particular schedule 7, which requires people to hand over information which the police want because it may assist a terrorist investigation. In addition, the decision handed down by the High Court of Justice is based on the fact that it was not sufficiently established that the notes on the interview of Mr. Moloney were of substantial value to the investigation. The principle of confidentiality of the sources was not mentioned as such in the judgement. The Special Rapporteur also notes with concern that schedule 7 is contained in the new terrorism bill which has recently been introduced in the House of Commons.

(c) The use of secrecy

56. The Special Rapporteur's attention was drawn to the fact that the Official Secrets Act 1989 is used to stifle legitimate debate and to penalize writers and journalists who refuse to reveal their sources.

57. Under the Official Secrets Act 1989, serving or retired officials face criminal prosecution - which means possible prison sentences and unlimited fines - if they disclose without authority information relating to defence, international relations, security and intelligence, and crime. The Special Rapporteur was informed that the Act does not provide for any form of public interest defence for unauthorized disclosure of information where the existence of crime, abuse of authority or other misconduct are revealed. It is also no defence

that material is already in the public domain. The Act is based on a presumption of secrecy in favour of the Government. Nor does it allow for a defence of previous publication, despite the European Court of Human Rights case, Observer and Guardian v. United Kingdom[3] (the "Spycatcher" case), in which the Court held that it was not legitimate to penalize disclosure once the information was in the public domain.

58. The Official Secrets Act is supplemented by an unofficial system of "D-notices" issued by a committee established in 1912, the Defence, Press and Broadcasting Advisory Committee (D-notice Committee). This committee, which provides advice on national security issues in the form of "D-notices", is run from an office in the Ministry of Defence and is not accountable to the public or to Parliament. Although D-notices have no formal legal force, it is unwise to ignore them as this may lead to more official action, such as prosecutions under the Official Secrets Act. The Special Rapporteur was told that the aim of the committee allegedly is to promote self-censorship by the media in the area of national security, which is defined very broadly. At times its objective appears to be to stifle debate about politically sensitive matters, rather than to protect national security as such.

59. A number of cases in which the Official Secrets Act or D-notices have been applied were brought to the attention of the Special Rapporteur. Two cases in particular which relate to prosecutions under the Act for disclosing information to protect public interest were mentioned.

60. The first case concerns David Shayler, a former employee of the British Intelligence Agency, MI5, who has reportedly been pursued by the British authorities in connection with allegations he made after his employment with MI5 was terminated. In particular, he disclosed "confidential" information to the Mail on Sunday, which published on 24 August 1997 an article on alleged bugging of left-wing politicians, as well as unnecessary and expensive investigation concerning Victoria Brittain, a Guardian journalist, inefficient and outdated bureaucratic methods and an endemic drinking culture within MI5. It is reported that Mr. Shayler left the United Kingdom on 23 August 1997 for France, fearing prosecution and arrest. The Government obtained a short-term injunction against the Mail on Sunday preventing the media from revealing any information about Mr. Shayler's time in MI5. Allegedly, the presiding judge, Mr. Justice Keen, stated that there was no harm to the public interest by the publication of the article, but he granted a short-term injunction since some of the material could potentially have been of use to a hostile power. It appears that Ms. Annie Machon, Mr. Shayler's partner, and three other acquaintances of Mr. Shayler were also arrested but released without charges. Following the submission on 31 July 1998 to the Government by the Mail on Sunday of a story alleging that MI6 funded a Libyan plot to assassinate Colonel Qaddafi which reportedly resulted in the death of civilians, the British authorities sought to have Mr. Shayler extradited from France, but the French court refused, on the basis that the prosecution was politically motivated. On 1 August 1998, Mr. Shayler was arrested by the French Département pour la sécurité du territoire and detained for two months at La Santé prison.

61. The second case mentioned to the Special Rapporteur concerns Tony Geraghty, a writer and former journalist, who was charged under section 5 of the Official Secrets Act in connection with the publication of his book, The Irish War, in 1998. This book includes a description of a surveillance system used by the British authorities in Northern Ireland. Before the book was published, the D-notice Committee requested Mr. Geraghty to hand over his manuscript, which

he refused to do. Despite its allegedly sensitive contents, the Government has taken no action to prevent or limit the publication of the book. However, in December 1998, the Ministry of Defence police visited Mr. Geraghty at his home, confiscating equipment and files while he was held for five hours at Leominster police station. In January and March 1999, he was questioned several times by the police and released on bail. The Special Rapporteur was recently informed that, on 20 December 1999, the Attorney-General asked the Crown Prosecution Service to stop the proceedings and consequently the charges against Mr. Geraghty were dropped. However, Nigel Wylde, a former computer specialist working with the Government and who allegedly provided information that Mr. Geraghty used in his book is still being prosecuted under section 2 of the Official Secrets Act.

(c) New legislative measures

62. New legislative measures are being adopted in the United Kingdom which have a direct impact on the exercise of the right to freedom of opinion and expression. Two bills - the Freedom of Information Bill and the Regulation of Interception and Communication Bill - are currently generating controversy and debate in the country.

(i) Freedom of Information Bill

63. The Government of the United Kingdom drafted the Freedom of Information Bill in May 1999 to replace the current non-statutory Code of Practice on Access to Government Information. This followed the white paper "Your right to know", drafted in the preparation of this legislation, which aimed at allowing widespread public access to official information and documents. The main features of the bill are: (i) a general right of access to information (ii) the duty of public authorities to adopt a scheme for publishing information as a matter of course and (iii) a new office of Information Commissioner and a new information tribunal with wide powers to enforce the Act.

64. The Special Rapporteur views the bill as a positive step towards increasing the flow of information to the public, yet he is critical of its retreat from the white paper "Your right to know". Nevertheless, the Special Rapporteur has taken notice of three significant changes with respect to the Code of Practice: (i) the bill defines "information" and "public authority" broadly to allow greater disclosure of information (ii) the institutional role of the Commissioner in evaluating public authorities' action and reviewing their refusals to disclose information and (iii) the legal responsibility attached to the act of defacing a record to prevent disclosure. The bill is a breakthrough insofar as journalists will now have the opportunity to go directly to the records and check "official" information.

65. However, the Special Rapporteur has noted with concern that the bill has been criticized on the following accounts: (i) there is a broad class of exemptions pertaining to security bodies, investigations, decision making and policy formation, (ii) the jurisdiction of the Commissioner is somewhat restricted, and (iii) the bill contains a weak test for disclosure. In particular, sections 18 to 28 have been brought to the attention of the Special Rapporteur. For instance, section 18 relating to the work of security bodies has been questioned for being too broad, since it also includes information which does not relate to security, strictly speaking. The Special Rapporteur would like to point out that security matters are often of the highest public interest

66. Furthermore, the bill reportedly contains certain categories that should not be treated as class exemptions, such as section 22, which refers to information that would prejudice "the interest of the United Kingdom abroad". Similarly, section 25 exempts information that has been held by public authorities for the purpose of various types of investigations. This exemption should be narrowed to include only material related to criminal process. Section 28 (3) exempts information likely to prejudice the maintenance of collective responsibility of ministers. Again, the Special Rapporteur believes that the bill should not cover all information relating to the development of policy, but only information which would inhibit legitimate policy process.

67. With regard to the power of the Commissioner, some of the exemptions merely require a ministerial certificate for preventing disclosure. The Special Rapporteur believes that the power of the Commissioner should not be restricted by a government veto. He also perceives as a weakness the fact that the bill does not include a public interest test, but considers "public interest" only as one factor among others.

68. Section 14 of the bill, which deals with discretionary disclosures to the public, has been widely questioned. The fact that the public authorities may require the applicant's reason for the request and to know how he/she intends to use the information has been perceived as a liability. Moreover, this provision requires that disclosure of the information would be lawful, implying that the bill is subject to secrecy laws.

69. In conclusion, the Special Rapporteur considers the attitude of the public authorities to the provisions of the bill of great significance. Indeed, public bodies are required under the bill to prepare and provide a reference book indicating their structure and organization, the type of records they hold and the arrangements made to enable access to them. Hence, the Special Rapporteur is particularly concerned about the process of obtaining information. For instance, the imposition of onerous fees can undermine the whole system of access. Yet, the fundamental change that the Special Rapporteur wishes to see implemented is equal status between the authority and the applicant in accessing the information. Also, the Official Secrets Act 1989, which contains a broad definition of official secrets remains in place. Indeed, section 35 of that Act undermines the goal of the Freedom of Information Bill by making it secondary to all other existing laws.

(ii) The Regulation of Interception and Communication Bill

70. The right to freedom of information is closely related to the right to privacy of the person, and more particularly of communication. This explains why the Regulation of Interception and Communication Bill, also known as the Regulation of Investigatory Powers Bill, has initiated a round of serious debates and consultations with particular regard to the implications for the right to freedom of opinion and expression.

71. With this bill, the Government's intention is to update the legislation contained in the Interception of Communication Act 1985 to take account of the new communication technologies, and in this light to provide a statutory framework for authorizing the disclosure of

data held by communications service providers. The 1985 Act dealt with the interception of telephone calls and opening mail. Implementation of the Act was mainly confined to Northern Ireland.

72. The Government, which has argued that interception has and will play a vital role in the fight against serious crime and threats to national security such as terrorism, acknowledges that "interception can take place when information cannot reasonably be acquired by other means". Part III of the bill is subject to controversy since it appears to infringe on the presumption of innocence embodied in article 6 of the European Convention on Human Rights. Reportedly the bill would give the police the power to demand decryption keys from anyone suspected of possessing them, while non-compliance could lead to a two-year jail sentence.

73. Therefore, the Special Rapporteur recommends a narrower definition of the concept of "Internet interception" in order to avoid abuses. He also considers that, if the necessity to review legislation is clear, in the interception of communications a fair balance and proportionality should be maintained, with a view to safeguarding private communications and avoiding unnecessary restrictions on the use of encryption on the Internet.

(e) Other types of legal restrictions

Defamation law

74. In the United Kingdom, it seems that there is a large number of plaintiffs seeking to sue for damages for libel and that this is due to the relative ease of obtaining large damage awards under English defamation law. A key problem reported to the Special Rapporteur concerning English defamation law is strict application of a truth standard, with the onus on the defendant. Thus, if the defendants cannot prove that their statements were true, they will generally be liable for damages, regardless of the status of the plaintiff, for example as politician or public figure, or of the public interest in having the material published. It is increasingly being recognized that in cases involving politicians and public figures, journalists should benefit from a defence showing that he or she acted professionally by seeking to verify the accuracy of the material, especially when publication was in the public interest. This should apply even if the material ultimately proved to be false or the journalist could not prove it to be true. Indeed, the Special Rapporteur considers that this would provide a better balance between the importance of protecting reputations and the need to ensure a free flow of information to the public.

75. Nevertheless, the Special Rapporteur was informed that the 1996 Defamation Act puts on a clear statutory basis the common law defence of innocent dissemination, providing that people such as printers and distributors who have taken part in the publication of defamatory material will not be liable where they did not know, and could not reasonably have been expected to know, that the publication was defamatory. This defence will also apply to people such as service providers for the Internet.

76. A judgement given by the House of Lords during the Special Rapporteur's visit was also brought to his attention. In Reynolds v. The Sunday Times,[4] the plaintiff, a former Taoisach (Prime Minister) of Ireland, began proceedings against the publishers of an article in The Sunday Times relating to the political crisis in Ireland in 1994 that culminated in the

resignation of Mr. Reynolds as Taoisach and the collapse of his government coalition. In this decision, Lord Nicholls said that the court should have particular regard to the importance of freedom of expression and that it should be slow to conclude that a publication, especially in the field of political discussion, was not in the public interest. Any doubts should be resolved in favour of publication.

77. The Special Rapporteur was also informed that the obscenity laws applicable in England and Wales are still very restrictive and applied in an arbitrary fashion. This is mainly due to the definition of obscenity by the Obscene Publications Act 1959, which is reported to be subjective and results in arbitrary, discriminatory and inconsistent application by police and other officials. Two main problems have been pointed out to the Special Rapporteur: the first is linked to the fact that the Act does provide for a defence of publication in the public good, in the interests of science, literature, art or learning, or other objects of general concern. One recent case is the seizure in October 1997 of the book Mapplethorpe from the library of the University of Central England. Mapplethorpe's work is reportedly widely regarded as some of the most important photography of this century. Although the Crown Prosecution Service eventually decided not to prosecute the university, students were denied access to the book for nearly a year.

78. Secondly, the Special Rapporteur was told that the British Board of Film Classification (BBFC) and the Independent Television Commission (ITC) apply excessively restrictive interpretations of obscenity. Films and commercial videos must be classified by the BBFC before they may be shown in the United Kingdom and the ITC is responsible for ensuring that licensed television broadcasters respect their licence conditions, including standards of good taste and decency. Film producers are also sometimes willing to cut material so as to obtain a less restrictive BBFC classification. It has been reported to the Special Rapporteur that the standards applied by the two bodies have failed to keep up with attitudes and values currently prevailing among the British public. Indeed, some materials were not granted the classification certificate, although they were available in most European countries as well as Canada, Australia and the United States.

2. Other concerns relevant to the promotion and respect for the right to freedom of opinion and expression

(a) Freedom of expression and assembly

79. In the United Kingdom the law provides for the right of peaceful assembly, but that right is limited routinely where it would impose a cost on public convenience. In Northern Ireland, the law which will apply in those circumstances is the Public Order (Northern Ireland) Order 1987 and the Public Processions Act 1998.

80. A major issue in Northern Ireland which was brought to the Special Rapporteur's attention is the annual "marching season" in Northern Ireland. Both nationalists and unionists[5] hold parades and marches, but the vast majority is sponsored by loyalist orders. Each year, from Easter until September, more than 2,600 traditional Protestant marches are organized by the Orange Order (the main loyalist marching order), some of which proceed through areas where

they are not welcome by the Catholic residents. Approximately 40 of these marches have routes that take them through Catholic neighbourhoods, giving rise to tensions and occasional violence.

81. The Special Rapporteur had the opportunity to meet with representatives of the Orange Order and of the resident's group in Portadown, one of the most affected areas, to have a clear understanding of this complex situation. The Orange Order views its processions as traditional marches giving expression to its members' religious and cultural heritage, and maintains that it is merely exercising its right to free assembly. The nationalist residents view these parades as a threat and a way to incite hatred since they celebrate Protestant "triumphs" over Catholics in historical battles. They also believe that the police presence accompanying the marches disproportionately disrupts the life of nationalist communities, by the prohibition of access to their homes, jobs and essentials such as food and medical treatment.

82. In this regard, the policing of these contentious marches, in particular the use of plastic bullets, raises serious concerns. During recent marching seasons, specifically from 1995 until 1998, violence has often characterized the marches, in particular those involving attempts by the Orange Order to parade in the mainly nationalist Garvaghy Road. This has led to disturbances across Northern Ireland. In July 1998, violence flared up following the decision by the Parades Commission to re-route a Protestant march to Dumcree church in Portadown away from the Garvaghy Road. A large number of people, mainly loyalists, allegedly suffered head and upper body injuries after being shot with plastic bullets by the security force. These injuries suggested that the force's internal guidelines requiring that shots be aimed below the waist had not been consistently followed. In 1998, three young brothers were burned alive when a petrol bomb hit their houses in what police said was a sectarian attack apparently linked to the Dumcree dispute. In this regard, it is relevant to mention that the lawyer Rosemary Nelson, who was murdered in March 1999 by a loyalist paramilitary group, was representing residents of the predominantly Catholic Garvaghy Road neighbourhood. She had reportedly been subjected to systematic intimidation and threats by the security forces in the years preceding her death.

83. The Special Rapporteur is aware of the fact that two very fundamental rights are in competition in this context: the right to freedom of expression and assembly and the right to privacy and to live in peace. Both have to be exercised in an equitable way so that one is not superior to the other. The Special Rapporteur also noted that the two communities suffer from this state of affairs and that reconciliation in Northern Ireland will depend upon the peaceful resolution of this type of conflict.

84. He is also convinced that the responsibility of the State authorities in Northern Ireland is to maintain the rule of law, thus assuring both communities equal protection of their rights. International law and jurisprudence provide some criteria in order to strike a balance; they are the importance of the protected right, the need in a democratic society to promote tolerance and broadmindedness, the weight and significance of the interests that the State is seeking to protect by interfering with the protected right, and the notion that the State must act proportionately. A fair and impartial policing of the demonstrations has also to be guaranteed.

85. Furthermore, the Special Rapporteur considers that the establishment of the Parades Commission which takes the responsibility from the Royal Ulster Constabulary to deal with parades, is an important step towards a peaceful solution to this difficult issue. He thus supports

the efforts of the Parades Commission members insofar as their decisions are fair and discussed with the interested parties. In particular, the Special Rapporteur wishes to welcome the concrete work undertaken by the Commission to keep the marches peaceful and the drafting of statutory documents relating to processions and parades (code of conduct, procedural rules and guidelines). The Special Rapporteur was, however, informed that, the Commission has been subject to direct interference from the authorities and that its decisions are criticized by both Catholics and Protestants. The Orange Order is particularly opposed to the decisions of the Commission and to its very existence. During a meeting with the Special Rapporteur, members of the Orange Order asserted that to prevent such marches is a denial of their culture and tradition, and therefore they disagree with the Commission.

86. Fear has also been expressed about the independence of commissioners who may be either more sympathetic to the Orange Order or to the residents. The Special Rapporteur considers that the procedure for selection of the members of the commission has to be as transparent as possible and take into consideration the merit, fairness and the balanced views of the candidates. Also, the decisions the Commission takes have to be widely disseminated in the media in order to explain to the population the reasons for the interdiction of a march or for a change of route.

87. Nevertheless, the Special Rapporteur was informed that the marching season in the summer of 1999 was quieter than in previous years and that the Commission's rulings have increasingly been complied with.

(b) The right to express cultural diversities

88. The Special Rapporteur had the opportunity to meet with the organizers of one of the largest community festivals in Western Europe, the West Belfast Festival. Located in a very nationalist area, this festival aims to express the Irish identity through the organization of cultural events (theatre, concerts, film festivals, exhibitions etc.). One controversial event which was brought to the attention of the Special Rapporteur is the Saint Patrick's Day Parade which was organized for the first time in March 1998, celebrating with great success Irish culture in the centre of Belfast. The festival is having funding problems due to the reportedly politically biased allocation of funds by the local council in Belfast. In particular, a play criticizing the police had its funding cut in 1999, as did the parade on St. Patrick's Day.

89. Another issue touches upon the use of languages other than English. There are about 25,000 Irish language speakers in Belfast. There has been a long campaign by activists to promote the use of the Irish language, which has in the past been met with hostility or indifference by the State. This campaign has been met with differing levels of official resistance. In particular, the campaign has focused on the use of the Irish language in schools. In addition, other individuals now campaign on behalf of the Ulster Scots language. Generally the Irish language campaign is seen as nationalist, while the Ulster Scots campaign is considered as unionist. Furthermore, there is a genuine disagreement amongst linguists about whether Ulster Scots is a language or a dialect. Nevertheless, it has a growing importance in terms of the unionist community's cultural identity. The Special Rapporteur considers that steps should be taken to improve the situation with regard to language, in particular by increasing the use of these languages in the media of Northern Ireland.

(c) Particular issues

90. The Special Rapporteur would like to raise three issues that deserve particular attention.

(i) Discrimination against parliamentarians

91. Mr. Martin McGuinness, member of Sinn Fein elected to Westminster in the general election of 1 May 1997, has applied to the European Court of Human Rights in the belief that his rights under articles 9, 10, 13 and 14 of the European Convention on Human Rights and article 3 of the first Protocol thereto were breached by the penalties contained in the Parliamentary Oath Act 1866 for failing to take the prescribed oath to the British monarchy. This followed the restrictions imposed by the Speaker of the House of Commons on 14 May 1997 which barred him and Mr. Gerry Adams from taking their seats in Parliament and using the normal facilities afforded to Members of Parliament. Mr. McGuinness's objection to the oath was based, in his own words, on Sinn Fein's party policy, which views such legislation as the Parliamentary Oath Act as anti-Catholic bias which is still a keystone of the British constitution. His application was ruled inadmissible by the European Court on 8 June 1999. However, there is currently speculation that the British Government intends to reserve the speaker's ruling on this issue. In addition, the House of Commons is currently debating a government bill which would allow members of the Irish Parliament to sit in the Commons, thereby endorsing dual membership.

(ii) The situation of women

92. Compared to the socio-economic situation in Great Britain, Northern Ireland suffers serious inequalities, which also target women. These inequalities are apparent between men and women, but also between women themselves on grounds of their religious/political backgrounds, their ethnicity, their age and other such status. Concern was also expressed about domestic violence, which in Northern Ireland constitutes nearly half of reported violent crime against women.

93. As regards the participation of women in politics, the Special Rapporteur noted that women have as yet made only modest headway, particularly at the level of decision-making bodies. According to the sources, whereas the proportion of female councillors is 28 per cent in England, it is only 14 per cent in Northern Ireland. There are no Northern Irish female members of the European Parliament, and no female Members of Parliament in Westminster. In the Belfast-based Assembly of 108 members, 14 members are women (12.9 per cent).

94. There is now machinery to address women's rights through the Minister for Women in the Cabinet, supported by the women's unit which, since June 1998, has been located within the Cabinet Office at the heart of the Government. The Good Friday Agreement also determined that equality should be mainstreamed in Northern Ireland with the help of the newly appointed Equality Commission. Also, a vibrant civil society has developed, in which women play an important role.

95. The Abortion Act 1976 does not extend to Northern Ireland, where, with limited exceptions, abortion continues to be illegal. According to the Office of National Statistics, at least 40 women leave Northern Ireland every week to avail themselves of the Abortion Act in Britain.

96. The Special Rapporteur learned with concern that in this matter women are being prevented, in certain cases, from gaining access to information. He was told that centres providing advice and counselling to women are attacked by anti-abortion groups, sometimes leading to their closure. The Family Planning Association, as well as the Brook Clinic, which in fact is not an abortion referral service, are regularly the target of campaigns of intimidation and harassment by Precious Life, an anti-abortion organization based in the United States. These attacks include picketing the homes of clinic workers, sending letters to their neighbours, denouncing them as murderers and shouting abuse to staff and clients when they enter the clinics.

97. The Special Rapporteur considers these attacks to be a violation of the rights of women to obtain information, insofar as young women, particularly, are prevented from using the clinics. Women should be able to request advice in a confidential place without fear of intimidation and abuse. In this regard, action should be taken by the Government to safeguard the right to information of women. An open debate and a consultation should also take place concerning the extension of the 1967 Abortion Act to Northern Ireland, which remains today a taboo subject.

(iii) The right to information of victims and of the public

98. Various sources expressed concern to the Special Rapporteur about the Government's failure to investigate independently and fully serious allegations of human rights violations in Northern Ireland and to bring the perpetrators to justice. In particular, the Special Rapporteur was made aware of the fact that the results of internal investigations are not made public. This is of particular concern to those persons whose relatives were killed by the army or the police. Because very few prosecutions are brought, it has become impossible for the families of the deceased to become aware of the full circumstances of any disputed killing. The desire to know the truth about these incidents now extends beyond just the relatives and immediate communities of those involved. These cases are indeed emblematic of a need for a more formal mechanism to deal with the past.

99. Some inquiries remain a total secret, such as those focusing on collusion between members of the security forces and loyalist paramilitary groups. The reports of senior police officers John Stalker, Colin Sampson and John Stevens have never been published. The lawyer Patrick Finucane, who specialized in human rights work, was killed in 1989 in the presence of his wife and his three children. Evidence of possible official collusion in Mr. Finucane's assassination surfaced in 1992, after which the Director of Public Prosecution commissioned an inquiry into Mr. Finucane's death. The report of the inquiry was never made public, although it was rumoured that it contained recommendations to prosecute four members of the security forces for collusion with loyalist paramilitaries. In this regard, reference should be made to the report of Mr. Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers, who called for an independent judicial inquiry to investigate the case of Patrick Finucane's murder.[6]

100. This issue was certainly taken into account by the Belfast Agreement and the British Government appointed Mr. Adam Ingram as Minister of Victims and Sir Kenneth Bloomfield as Victim's Commissioner. The latter was designated to initiate a consultation with the victims and issued a report in May 1998. Some of the victims of State violence with whom the Special Rapporteur met clearly expressed their disappointment about the work of these mechanisms, particularly the Victim's Commissioner. They continue to claim the right to know the full circumstances of their relatives' death.

101. Furthermore, the report of the Independent Commission on Policing for Northern Ireland, recently published, failed to address the issue of past abuses by the police and did not provide adequate investigative mechanisms to deal with allegations of such abuses. This concern was expressed to the Special Rapporteur, although it was also recognized that there were progressive elements in the report concerning the achievement of a more accountable policing service.

102. It was suggested that a truth commission should be established, similar to the one existing in South Africa. Allowing the victims to tell in a public forum what has happened to them and to their relatives would encourage reconciliation. This would also allow disclosure of information to the victims and the public in general, as well as reparation for the victims or their relatives. These principles are indeed fundamental requirements for both the individual and the community as part of the healing and conflict resolution process.

III. CONCLUDING OBSERVATIONS

103. The Special Rapporteur welcomes the commitment of the Government of the United Kingdom to democracy, the rule of law and human rights. He strongly encourages the ongoing peace process in Northern Ireland, which is fundamental for the promotion and protection of human rights, including the right to freedom of opinion and expression.

104. The Special Rapporteur considers the enactment of the Human Rights Act 1998 to be an important step towards the concrete implementation of human rights, as well as for their legal protection. He also welcomes the establishment of new institutions in Northern Ireland, especially the Human Rights Commission, which should create an environment favourable to the development of human rights in general and the right to freedom of opinion and expression in particular. The Special Rapporteur considers that a culture of human rights is indispensable for a peaceful and durable resolution of the conflict in Northern Ireland and that the Human Rights Commission has a fundamental role to play in that regard.

105. The Special Rapporteur can assert that freedom of opinion and expression is widely visible in the United Kingdom. Since the lifting of the broadcasting ban, the media have been operating in a free and independent environment. Along the same lines, the Special Rapporteur observes that freedom of opinion and expression clearly finds the protection it warrants and any attempt at restriction is closely scrutinized by all sectors of society. The controversy around the Freedom of Information Bill, in particular, shows that healthy debates do take place.

106. The Special Rapporteur welcomes the new Freedom of Information Bill as a way to redress significant imbalances in the current system of disclosing information. However, despite the fact that the Special Rapporteur is aware of the difficulty in trying to balance three competing

interests - a right to information, a right to privacy and a right to confidentiality - the bill does not appear to grant considerable access to information. The controversy associated with this initiative among professionals in the media should convince the Government to re-examine it.

107. The Special Rapporteur notes with concern that freedom of opinion and expression has been hindered to some extent by the use and implementation of certain laws which restrict this right. Emergency powers have eroded public confidence, not only in the criminal justice system but also in the free operation of the investigative press. The fact that anti-terrorism legislation has not, and shows no sign of, being repealed is a matter of concern, as is the Government's decision to introduce permanent anti-terrorist legislation in the form of the terrorism bill.

108. The Special Rapporteur is concerned at the use of secrecy in the United Kingdom, which leads to restrictions in the daily work of the press, but also hinders full access to information relating to the public interest. In particular, the Special Rapporteur considers the use of the Official Secrets Act to prosecute journalists and writers, as well as the existence of the D-notice Committee, to be incompatible with media freedom. The Special Rapporteur is of the view that a democracy can only operate if the citizens and their elected representatives are fully informed. With the exception of a few types of documents, it is desirable to make government documents public to allow citizens to know that public funds are being utilized correctly. Thus the Special Rapporteur notes that in order for journalists to be able to carry out their role as "watchdogs" in a democratic society, it is indispensable that they have access, granted on an equitable and impartial basis, to information held by public authorities.

109. Furthermore, the Special Rapporteur notes with concern the attacks against the internationally recognized principle of the confidentiality of journalists' sources. He considers that protection of journalistic sources is one of the basic conditions for press freedom and is at the heart of freedom of expression.

110. As far as the rights to freedom of expression and assembly are concerned, the Special Rapporteur wishes to recall that they are core human rights and essential in a democracy. These rights have, however, to be exercised without prejudice to the rights and liberties of others. Therefore, State interference with these rights should be exceptional and only to protect specific interests (i.e. protection of the rights of others, public safety, national security, public order). Thus, where the exercise of these rights infringes upon the rights and freedoms of others, only limitations proportionate to the protection of the rights of others can be imposed. The police are under the double duty to protect the rights of those assembled and to guarantee that the rights of others are not violated in the process. In this context, the Special Rapporteur wishes to reiterate his support for the creation of the Parades Commission and appreciates the difficult task it has to carry out. Patience and understanding from the population are requested in order for the Commission to discharge its tasks in an impartial and effective manner.

111. Along the same lines, the Special Rapporteur welcomes the government initiative of appointing a Police Ombudsperson, who should be able to contribute to raising public confidence in the complaints procedure system. He wishes to encourage the work of this new institution and to call for the cooperation of other parties.

112. The Special Rapporteur remains concerned over some additional issues he has identified which have a direct impact on the exercise of the right to freedom of opinion and expression in the United Kingdom. He wishes to emphasize especially the importance of the right to information for victims. The Special Rapporteur considers that the truth, through disclosure of information to the families of victims, is an essential part of the healing process. A climate of openness is important in building sustainable confidence in the peace process in Northern Ireland. In this regard, he wishes to refer to a recommendation made by the Human Rights Committee in 1995 that "specific efforts be made to enhance in Northern Ireland confidence in the administration of justice by resolving outstanding cases and by putting in place transparently fair procedures for the independent investigation of complaints".

IV. RECOMMENDATIONS

113. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations for consideration by the Government. In view of the open and constructive exchange of views which took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

(a) The Special Rapporteur strongly encourages the Government of the United Kingdom to take all necessary steps to accede to the Optional Protocol to the International Covenant on Civil and Political Rights in order to allow individuals to submit complaints to the United Nations Human Rights Committee.

(b) In accordance with the recommendations of the Committee against Torture in 1996 and of the Human Rights Committee in 1998 asking for the dismantling of emergency laws, the Special Rapporteur urges the Government to repeal all provisions which are not in conformity with international treaties and standards, in particular emergency laws like the Prevention of Terrorism Act which have a chilling effect on the right to freedom of opinion and expression.

(c) The Government is strongly encouraged to ensure that any restrictions on the right to freedom of opinion and expression remain the exception, bearing in mind that such restrictions must be limited to those permissible under article 19 of the International Covenant on Civil and Political Rights.

(d) The Special Rapporteur urges the Government to ensure that future legislation and its implementation are in compliance with article 19 and other relevant international standards. In the case of the Freedom of Information Bill, the Special Rapporteur would request the Government to review the text of the bill with regard to two main aspects: the scope of class exceptions should be limited, and the Information Commissioner should have sufficient power to ensure effective access to information held by public authorities.

(e) The Government is further urged to amend certain domestic laws which are currently too restrictive as to the exercise of the right to freedom of opinion and expression:

(i) Section 10 of the Contempt of Court Act 1981 should be reviewed to make clear that mandatory source disclosure may be ordered only in the most pressing circumstances - where there is no other means of obtaining the information and where the public interest in receiving it clearly overrides the importance of protecting source confidentiality;

(ii) The Official Secrets Act should be amended so as to allow for penalties for disclosing information only where disclosure would pose a serious risk of substantial and immediate harm to a legitimate national security or public interest; it should also be a defence if the information is already in the public sphere or if the public interest in disclosure outweighs the secrecy interest;

(iii) The obscenity law should be amended to include a concrete requirement of harm before material may be prohibited;

(iv) The defamation law should be amended to allow for a defence of reasonable publication in the public interest. In addition the offence of criminal libel should be abolished.

(f) The Special Rapporteur welcomes the establishment of the Northern Ireland Human Rights Commission and the Police Ombudsperson, but would call upon the Government to provide them with the adequate human and financial resources to carry out their mandate effectively and with the independence required.

(g) As regards Northern Ireland and the media, the Special Rapporteur considers that further efforts should be made to improve the media tone and attitude towards Northern Ireland. Consequently, it should be envisaged that the BBC and other broadcasters re-evaluate their guidelines in order to adapt them to changes going on in Northern Ireland and in order to contribute to a general movement in favour of peace.

(h) The Special Rapporteur considers the building of a human rights culture to be of extreme importance in resolving the conflict in Northern Ireland. The support of the Northern Ireland Human Rights Commission, as well as of international organizations like UNESCO and OHCHR, is required. In addition to the current changes in legislation, a seminar for the training of journalists and debates relating to human rights issues should be encouraged.

(i) The Special Rapporteur calls upon the Government to pay particular attention to the issue of marching and to support the work of the Parades Commission. The balance between Catholics and Protestants in the membership of the Commission, as well as its independence, have to be fully guaranteed. In this regard, the Special Rapporteur would suggest amending the Public Processions (Northern Ireland) Act 1998 in order to ensure the independence of Commission members from Government.

(j) Furthermore, the Government is asked to ensure that the law and practice governing public demonstrations are in compliance with international standards. In this regard, the Special Rapporteur urges the Government to stop the use of excessive force against peaceful demonstrators, in particular the indiscriminate use of life-threatening plastic bullets, as recommended by the Committee against Torture in 1998.

(k) The Special Rapporteur calls upon the Government to disclose information to the victims of the conflict in Northern Ireland to a maximum extent, in order to restore confidence in the police system and to reinforce the peace process. He particularly encourages the Government to make public the findings of the Stalker/Sampson and Stevens inquiries.

(l) Finally, in view of the number of allegations received which he could not consider since they did not fall within his mandate, the Special Rapporteur would like to encourage the Government to consider a visit to Northern Ireland of the Special Rapporteur on religious intolerance. The Special Rapporteur is convinced that such a visit would assist the Government in finding additional ways to promote cooperation and reconciliation between the two communities.

Notes

[1] The BBC Producer's Guidelines were last published in November 1996. They set out the current code of good practice. Section 2 of the Guidelines is entitled "Dealing with criminals".

[2] Goodwin v. the United Kingdom (16/1994/463/544), judgement adopted on 22 February 1996.

[3] 26 November 1991, 14 EHRR 153.

[4] The weekly Law Reports, 12 November 1999.

[5] Nationalists are Catholics and characterized by their will to unite with the Republic of Ireland. Loyalists or unionists are Protestants and wish to remain with the United Kingdom.

[6] See E/CN.4/1998/39/Add.4.

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

Officials

London

Carolyn Browne, Head, Human Rights Policy Department, Foreign and Commonwealth Office

Carolyn Morrison, Head of International Broadcasting, Broadcasting Policy Division, Department for Culture, Media and Sport

Mark McGann, Head of Press and Music Branch, Media Division, Department For Culture, Media and Sport

Christopher Dawes, Head of General Broadcasting Policy, Broadcasting Policy Division, Department for Culture, Media and Sport

Nicholas Hodgson, Head of International and Common Law Service

Lee Hughes, Head of Freedom of Information Team

Richard Jenkins, Policy Adviser, Freedom of Information, Constitutional & Community, Home Office

Northern Ireland

George Howarth, Minister with responsibility for human rights, Northern Ireland

Ken Lindsay, Head, Police Division for the Northern Ireland Office

Stephen Webb, Security and International Division

David McIlroy, Rights and European Division

Mrs. Nuala O'Loan, Police Ombudsman (Designate) for Northern Ireland

Frank Guckian and David Hewitt, Commission members, Parades Commission

Media professionals

Professor Robert Pinker and Janet Anderson, Press Complaints Commission

Alex Thomson, Channel 4 News, Chief Correspondent

John Ware, BBC

Peter Taylor, BBC

Maurice Frankel, Director, The Campaign for Freedom of Information

Granville Williams, Campaign for Press and Broadcasting Freedom

Tony Geraghty, NUJ/Society of Authors

John Foster, General Secretary, National Union of Journalists (NUJ)

Tim Gopsill, NUJ

Kevin Cooper, NUJ member, Photoline Photographic Agency

Sean McPhilemy, television broadcaster and author

Ed Maloney, Northern Editor, Sunday Tribune

David McKittrick, The Independent

Academics

Kevin Boyle, Human Rights Centre, University of Essex

Dr K S Venkateswaran, University of Ulster

Non-governmental organizations

Andrea Puddeplatt, Executive Director of Article 19, and his colleagues

Jane Winter, British Irish Rights Watch

Halya Gowan, Amnesty International

Elizabeth Smith, Commonwealth Broadcasting Association

Kevin d'Arcy, Association of European Journalists, International Press Institute

Mel James, International Policy Executive (Human Rights), The Law Society

Relatives for Justice

Others

Brice Dickson and Professor Hadden, Northern Ireland Human Rights Commission

Michael Flannagan, lawyer

Bro. David Jones, Press Officer, Orange Order, Portadown District

Garvaghy Road Residents Association

Laurence McKeown, Coiste na n-Iarchimi Republican Ex-prisoners' Group

Mary Crawford, Brook Advisory Centre

Caitriona Ruane, West Belfast Festival Committee

Nelson McConsland/Lee Reynolds, Ulster Scots Heritage Council

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